United Nations E/C.19/2010/17

Economic and Social Council

Distr.: General
18 February 2010

Original: English

Permanent Forum on Indigenous Issues
Ninth session
New York, 19-30 April 2010
Item 3 of the provisional agenda*
Discussion on the special theme for the year: "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples"

Indigenous peoples: development with culture and identity in the light of the United Nations Declaration on the Rights of Indigenous Peoples**

A reflection paper of the Inter-Agency Support Group on Indigenous Issues,[1] consolidated by the United Nations Educational, Scientific and Cultural Organization[2]

* E/C.19/2010/1.

** The present document has been submitted late owing to the complexity of coordinating inter-agency contributions.

[1] The following 14 members of the Inter-Agency Support Group on Indigenous Issues (listed in alphabetical order by organization) contributed to the present paper: the secretariat of the Convention on Biological Diversity; the Food and Agriculture Organization of the United Nations; the International Fund for Agricultural Development; the International Labour Organization; the International Land Coalition; the Office of the United Nations High Commissioner for Human Rights; the secretariat of the Permanent Forum on Indigenous Issues; the United Nations Children's Fund; the United Nations Development Programme; the United Nations Educational, Scientific and Cultural Organization; the United Nations Environment Programme; the United Nations Human Settlements Programme; the United Nations Population Fund; and the World Intellectual Property Organization. The long version of the present paper appears as E/C.19/2010/CRP.3 and is available from www.un.org/indigenous.

[2] Division of Cultural Policies and Intercultural Dialogue.

10-24543 (E) 150310

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I. Introduction

1. The members of the United Nations Permanent Forum on Indigenous Issues selected the following theme for its ninth annual session: "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples". While article 3 of the Declaration stipulates the right of indigenous peoples to self-determination and the free pursuit of their economic, social and cultural development, article 32 emphasizes the right of indigenous peoples to determine and develop priorities and strategies for the development or use of their lands or territories and other resources. In other words, the Declaration recognizes the right of indigenous peoples to development in accordance with their own aspirations and needs, providing a foundation for development with culture and identity.

2. The label of "development with culture and identity" has gained prominence in the work of the Permanent Forum since the proclamation of the Second International Decade of the World's Indigenous People (2005-2014). In resolution 59/174, the General Assembly reaffirmed that States should, in accordance with international law, take concerted positive steps to ensure respect for all human rights and fundamental freedoms of indigenous people, on the basis of equality and non-discrimination, and recognized the value and diversity of their distinctive identities, cultures and social organization. The indivisibility of culture and development was made explicit in the official Programme of Action for the Decade (A/60/270 and Add.1), which recommended that culture should be integrated as a prerequisite and a basis for development project design in order to build "development with identity", respecting people's way of life and building sustainable human development.

3. The genesis of the development with culture and identity approach goes beyond the recent history of the label, however. The jurisprudence of the Inter-American Court of Human Rights and the case law and general comments of human rights treaty bodies further to complaints filed by indigenous peoples have significantly contributed to laying the legal foundations for the Declaration on the Rights of Indigenous Peoples and thus for development with culture and identity.[3] Similarly, the 1989 International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169) recommended the self-determined development of indigenous peoples based on the recognition of their culture and identity. Indeed, debates on culture and development have occupied considerable space within the United Nations system over the past 40 years.

4. From the perspective of many indigenous peoples, "dominant" development paradigms and practices, characterized by "their strong focus on economic progress without the integration of cultural development, social justice and environmental sustainability", have failed, since they undermined and negated the cultures and world views of indigenous peoples, even considering them as obstacles.[4] Indigenous

[3] See, for example, Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Ser. C (No. 79) (2001).

[4] See the report of the consultation workshop and dialogue on indigenous peoples' self-determined development or development with identity, held from 14 to 17 March 2008 in Tivoli, Italy (E/C.19/2008/CRP.11).

peoples today continue to face serious discrimination in terms of access to basic social services, and are disproportionately represented among the world's poor. Many populations have suffered historically from forced displacement, and their vulnerability to the impacts of globalization and climate change remains particularly high.

5. Despite these multiple threats, however, indigenous peoples have demonstrated their capacity to adapt to change while continuing to sustain their distinct world views, knowledge systems and practices, which continue to allow them to effectively manage changes to their societies and environments. Their cultural heritage and creativity provide a solid basis for generating culturally and environmentally appropriate development strategies. Development with culture and identity indeed calls for indigenous peoples to be the creators and agents of their development initiatives. Having indigenous peoples in the driver's seat can further enhance the success of development projects, as they are more likely to be accepted, sustained and pursued further by the indigenous communities concerned, ultimately reducing the need for outside intervention. The added value of all self-driven approaches to development is multifaceted, with social, cultural, economic and environmental benefits.

6. The present paper is a joint contribution of the Inter-Agency Support Group on Indigenous Issues[5] to the debate on development with culture and identity. Its aim is to approach such development from an inter-agency perspective, in order to advance thinking and stimulate ideas for action in the United Nations system on the notion and its applications. The paper highlights the conceptual and legal underpinnings of development with culture and identity in United Nations development discourse and normative frameworks, analyses relevant United Nations development approaches and experiences, and assesses implications for the United Nations system in terms of programming, policy and governance processes. The paper thereby is an attempt to also address and propose ways to overcome challenges in achieving development with culture and identity as they relate to the complex issue of human, cultural and environmental vulnerability and fragility.

II. Understanding conceptual and legal underpinnings of development with culture and identity

7. Development with culture and identity, with reference to the United Nations Declaration on the Rights of Indigenous Peoples, is a complex notion that is firmly grounded in international human rights agreements, notably those related to culture, as an integral component of sustainable livelihood and well-being. Development with culture and identity furthermore resonates strongly with the development discourse of the United Nations, which evolved from single-modelled economic progress to broader notions of human and sustainable development, increasingly recognizing the value and principles of linking cultural and biological diversity, as well as the responsibility to fulfil human rights and to address the aspirations of both individuals and communities. As further explained below, United Nations

[5] The Inter-Agency Support Group was established to support and promote the mandate of the United Nations Permanent Forum on Indigenous Issues within the United Nations system. Its mandate was later expanded to include support to indigenous-related mandates throughout the intergovernmental system.

development frameworks that recognize and build on culture and identity are inherently human rights-based and grounded in an effort to humanize development. They reveal a broad and dynamic understanding of culture, recognize interconnections between cultural and biological diversity and promote gender equality; at the same time, they require genuine dialogue with other cultures to flourish and regenerate. In this way, United Nations organizations, with reference to their specific mandate, have over the years brought new ideas and purpose to the development debate.[6]

A. Putting people at the centre: the human development paradigm

8. The emergence of the human development paradigm in the 1980s, culminating with the first *Human Development Report* in 1990, marked the beginning of a shift in international development discourse, a questioning of the pre-eminence of economic growth and a steady movement towards a broader well-being approach, putting people back at the centre of the process.[7] It set a new global agenda for human development and its measurement, suggesting new sets of indicators for that purpose.

9. The human development paradigm emphasizes that the basic purpose of development is to enlarge people's choices and enhance human capabilities and freedoms, enabling people to enjoy long, healthy and creative lives. The emphasis on choice, fundamental freedoms and participation in decisions affecting the life of one's community is indeed central to development with culture and identity.

10. Over the past decades, the understanding of the human development paradigm has deepened, notably through its applications in practice but also by linking it to the critical challenges of our times. The 2004 *Human Development Report* on cultural liberty is one noteworthy example; it articulates the indivisibility of development, culture and identity in the consideration of indigenous peoples' issues. It states that human development "requires more than health, education, a decent standard of living and political freedom. People's cultural identities must be recognized and accommodated by the State, and people must be free to express these identities without being discriminated against in other aspects of their lives."[8] In other words, efforts to humanize development require a global commitment to cultural diversity, tolerance and pluralism as non-negotiable principles.

B. Giving culture a permanent place in development thinking

11. The 1982 World Conference on Cultural Policies, also known as MONDIACULT, became a landmark for debates on the indivisibility of development and culture, defining the latter in the wider, anthropological sense of the word as encompassing the entire range of spiritual, material and intellectual

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[6] See, notably, the *World Culture Reports*, the *Human Development Reports*, the *State of World Population* reports, *Cultural and Spiritual Values of Biodiversity: A Complementary Contribution to the Global Biodiversity Assessment* and the *State of the World's Cities* reports.

[7] See United Nations Development Programme, "Origins of the human development approach". Available from http://hdr.undp.org/en/humandev/origins.

[8] See United Nations Development Programme, *Human Development Report 2004: Cultural Liberty in Today's Diverse World* (New York, 2004).

values that typify a particular group or society.[9] In other words, culture became understood as encompassing all that human beings have and do to produce, relate to each other and adapt to the physical environment. Thus the United Nations World Commission on Culture and Development was asked to give culture a permanent place in development thinking and emphasized that "development divorced from its human or cultural context is growth without a soul".[10]

12. The indivisibility of culture and development thus implies recognition of the intangible dimensions of development, recognizing people, values, knowledge systems and the capacity to create and aspire as integral parts of development. The diversity of these visions and expressions, which are not static but rather constantly evolving, is embodied in the "uniqueness and plurality of the identities" of the groups and societies making up humankind, including indigenous peoples. Cultural diversity is thus "one of the roots of development, understood not simply in terms of economic growth, but also as a means to achieve a more satisfactory intellectual, emotional, moral and spiritual existence".[11]

13. Nevertheless, connecting culture and development entails challenges for contemporary, de facto plural, societies, challenges that are well known to indigenous peoples: (a) the "hyperculturalization" of social issues, which makes culture the single cause of all kinds of problems; (b) assimilation policies based on the assumption that cultures are a threat to national unity, social cohesion and development; and (c) segregation in the name of particularism, or stressing differences to the extent that they become incompatible with a public life.[12] Indigenous cultures may furthermore be confronted with major risks of folklorization, mummification and commercialization.

14. Conceptual advances recognizing the indivisibility of culture and development have found an echo in the normative sphere. The United Nations Educational, Scientific and Cultural Organization (UNESCO) Universal Declaration on Cultural Diversity (2001), as well as related conventions,[13] indeed bring together the politics of identity with the economics of sustainable human development and support individuals and communities, as well as nation States, in promoting their own development on their own terms. Indigenous peoples and their human rights, cultures and knowledge systems hold a significant place in these normative

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[9] See *State of the World's Indigenous Peoples* (United Nations publication, Sales No. 09.VI.13), chap. II.

[10] See *Our Creative Diversity: Report of the World Commission on Culture and Development* (Paris, United Nations Educational, Scientific and Cultural Organization, 1996).

[11] See articles 1 and 3 of the United Nations Educational, Scientific and Cultural Organization Universal Declaration on Cultural Diversity (2001).

[12] Intervention of Katérina Stenou, Director of the Division of Cultural Policies and Intercultural Dialogue and United Nations Educational, Scientific and Cultural Organization (UNESCO) focal point for the Second International Decade of the World's Indigenous People, at the round table on "Development with culture and identity in light of the Declaration on the Rights of Indigenous Peoples" organized by UNESCO on 15 September 2008 in Paris.

[13] Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005); Convention for the Safeguarding of the Intangible Cultural Heritage (2003); Convention on the Protection of Underwater Cultural Heritage (2001); Convention concerning the Protection of the World Cultural and Natural Heritage (1972); Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970); Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954); and Universal Copyright Convention (1952 and 1971).

instruments. Together with the World Intellectual Property Organization (WIPO) draft provisions for the protection of traditional cultural expressions and expressions of folklore and for the protection of traditional knowledge,[14] they are important milestones in promoting development with culture and identity.

15. By acknowledging that the relation between culture and development is not one of dichotomy but of indivisibility, the United Nations discourse and normative frameworks resonate with indigenous peoples' holistic systems of thought, which consider that "culture is development and development is culture".[15] Therefore, there is no prescribed pathway for the development of a society, no single model on which development strategies should be based, as was emphasized in the recent world report on cultural diversity and intercultural dialogue.[16]

C. Linking cultural and biological diversity for sustainable human development

16. While the debate on culture and development succeeded in putting the human being back at the centre of the development agenda, it continued to consider nature as "a thing apart". This anthropocentrism came to be questioned in debates on the linkages between cultural and biological diversity, in particular from the point of view of indigenous peoples.

17. For many indigenous peoples, development with culture and identity necessarily also considers the linkages between cultural and biological diversity. While mainstream development has traditionally entailed the large-scale exploitation of natural resources, indigenous peoples have developed sustainable relationships with their natural surroundings. As the issue of *Poverty in Focus* on "Indigenising development" pointedly states, nature cannot be seen as merely "a grocery store at the service of men".[17] Throughout history, indigenous peoples have developed complex cosmologies in which respecting the interdependence of human beings and nature is a fundamental value, and community well-being, balance and harmony have been prioritized over growth and technology.

18. These linkages between cultural and biological diversity have been increasingly articulated in debates on sustainable development, most recently in the context of climate change, emphasizing that the needs of the present should be addressed without compromising the ability of future generations to meet their own needs.[18] Reduced diversity, in its cultural and biological manifestations, poses a threat to global stability and sustainability, rendering the world and its inhabitants more and more vulnerable. Increasingly, cultural and biological diversity are

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[14] Available from www.wipo.int.

[15] See Victoria Tauli-Corpuz, "The concept of indigenous peoples' self-determined development or development with identity and culture: challenges and trajectories", paper commissioned by the United Nations Educational, Scientific and Cultural Organization, 2008.

[16] See United Nations Educational, Scientific and Cultural Organization, *Investing in Cultural Diversity and Intercultural Dialogue*, World Report No. 2 (Paris, 2009).

[17] See International Policy Centre for Inclusive Growth, "Indigenising development", *Poverty in Focus*, No. 17 (Brasilia, May 2009).

[18] See also the report of the World Commission on Environment and Development entitled *Our Common Future* (A/42/427, annex).

considered as collective forces of development, since together they hold the key to ensuring resilience in both social and ecological systems.[19]

19. The Convention on Biological Diversity, adopted at the 1992 United Nations Conference on Environment and Development, in article 8 (j), calls on parties to respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities relevant for the conservation of biological diversity, to promote their wider application with the approval of knowledge holders and to encourage equitable sharing of the benefits arising out of the use of biological diversity. The conservation, sustainable use and equitable sharing of benefits that nature provides are also the cornerstones of indigenous societies.

20. Mechanisms put in place to respond to climate change, such as the United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD), offer opportunities for indigenous peoples to see their climate concerns addressed. More clarity on land ownership may ensure that such mechanisms can effectively benefit indigenous peoples.

21. It is problematic, however, to note that sustainable development discourse and environmental conservation approaches often promote a one-dimensional vision of indigenous peoples as custodians of nature, reigniting the myth of the "noble savage".[20] In practice, sustainable development has attempted to mitigate the negative impacts of traditional conceptions of development rather than to radically question its principles, processes and logic. Through proposing development with culture and identity, indigenous peoples encourage the international community to go further in rethinking biocultural diversity and sustainability. They are sending the strong message that diversity is an important prerequisite for ensuring development that is environmentally, socially, culturally and economically resilient and sustainable.[21]

D. Interface with human rights and special consideration of gender, children and youth

22. What is still often forgotten in development debates is that international human rights instruments have for decades provided a comprehensive international legal framework of obligations, which States have voluntarily agreed to fulfil and which provides the parameters of what Governments may or may not do in the name of development. These human rights instruments, elaborated by the United Nations in the past five decades, have opened up considerable conceptual space in which to bring together human rights and development, creating what is now known as the

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[19] See United Nations Educational, Scientific and Cultural Organization (UNESCO) and United Nations Environment Programme (UNEP), *Cultural Diversity and Biodiversity for Sustainable Development: A Jointly Convened UNESCO and UNEP High-Level Roundtable Held on 3 September 2002 in Johannesburg during the World Summit on Sustainable Development* (Nairobi, UNEP, 2003).

[20] See José Pimenta, "Twisting development: the Ashaninka way" in "Indigenising Development" (footnote 17).

[21] See United Nations Educational, Scientific and Cultural Organization, "Links between biological and cultural diversity: concepts, methods and experiences", report of an international workshop (Paris, 2008).

United Nations common understanding on a human rights-based approach to development cooperation, which was adopted by the United Nations Development Group in 2003. This approach, which addresses issues of culture and gender, aims to promote and protect human rights, reduce inequality and harness the substantive participation of those who are most affected, including children. Indeed, the links between culture, gender and human rights are part and parcel of development with culture and identity, and require attention if progress on the human rights situation of indigenous peoples is to be attained. Women, children and youth are explicitly mentioned in several articles of the United Nations Declaration on the Rights of Indigenous Peoples, since they have often been victims of multiple discrimination and have not always received the distinct consideration they deserve as key actors with regard to development with culture and identity (see CRC/C/GC/11).

23. The right to self-determination is recognized in common article 1 of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Declaration on the Rights of Indigenous Peoples. By virtue of this right, people may freely pursue their economic, social and cultural development. They may also exercise their "right to autonomy or self-government in matters relating to their internal and local affairs",[22] which points to the importance of access, use and control of land, territories and resources for self-determination. As for ILO Convention No. 169, it elaborated on the right of indigenous peoples to development, underlining how that should be promoted by States, based on respect for the right of indigenous peoples to determine their own priorities and the importance of the concepts of consultation, consent and participation. Therefore, according to the international normative human rights framework, development is far from a single-model concept.

24. Two normative pillars of the United Nations Declaration on the Rights of Indigenous Peoples underpin the concept of development with culture and identity: the set of rights defining the effective participation of indigenous peoples and the set of rights defining the cultural rights of indigenous peoples.[23] In the Declaration, there are 9 preambular paragraphs and 15 operative articles dealing with consultation, partnership and participation of indigenous peoples in a democratic polity that essentially lay the foundation for equitable interaction with indigenous peoples. Furthermore, through its 17 articles about culture, the Declaration illustrates that cultural rights are more than merely those rights which refer to culture; they include all human rights that protect and promote the cultural identity of individuals and their communities.

25. It has been argued, however, that cultural rights can in fact conflict with other human rights. This argument is based on a conceptual confusion between cultural rights and cultural practices, customs and prejudices that infringe on human dignity, for example, female genital mutilation or widow cleansing. The UNESCO Universal Declaration on Cultural Diversity is clear on this point, reasserting that "cultural rights are an integral part of human rights, which are universal, indivisible and

[22] See Article 4 of the United Nations Declaration on the Rights of Indigenous Peoples.

[23] International human rights provisions specifically dealing with cultural rights are found in article 27 of both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights; article 15 of the International Covenant on Economic, Social and Cultural Rights; and article 5 of the United Nations Educational, Scientific and Cultural Organization Universal Declaration on Cultural Diversity.

interdependent" and that "no one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope". Similar provisions are contained in other global instruments.

26. Thus, States are required to respect their international human rights obligations, including the full and effective participation of indigenous peoples, notably indigenous women, youth and children, in setting development policies and programmes, even when those voices reflect different visions and cultural perspectives with regard to human development. The adoption of the United Nations Declaration on the Rights of Indigenous Peoples therefore requires new approaches to development that are respectful of the cultures of indigenous peoples within larger human rights frameworks, and encourages the building of genuine partnerships.

III. Applying the concept of development with culture and identity in United Nations areas of work

27. The various dimensions and principles of development with culture and identity not only are part and parcel of United Nations development discourse and legal instruments but also find concrete applications in various areas of work of United Nations entities. Given the magnitude of relevant work carried out by the United Nations, the task of undertaking a comprehensive analysis from a perspective of development with culture and identity would go well beyond the scope of the present paper. Moreover, there is as yet no tool to facilitate a systematic analysis from such a perspective, nor is there a way to establish criteria for what would qualify as best practice. The United Nations Declaration on the Rights of Indigenous Peoples provides a useful starting point for an analytical programming lens, however, and the discussion below may contribute to a reflection on what good practice in the area of development with culture and identity entails and what challenges persist.

A. Key United Nations programme areas to support development with culture and identity: from socio-economic development and the environment to health, education and culture

28. The United Nations has a rich array of development project and programme experiences that reflect principles and issues of development with culture and identity as they were discussed in section II above. Some of them are presented below and fall under the six mandated areas of the United Nations Permanent Forum on Indigenous Issues: (a) economic and social development; (b) environment; (c) health; (d) education; (e) culture; and (f) human rights. These examples were identified by members of the Inter-Agency Support Group as illustrations of good practice in the area of development with culture and identity for the purpose of the present joint paper; they provide only a glimpse of what is being done.[24]

29. The livelihoods of indigenous peoples, including food systems and food sovereignty, must be sustained, since these represent the key source of their identity,

[24] For further details on the projects submitted by United Nations organizations, please refer to the long version of the present paper and its annexes, which is available from www.un.org/indigenous.

survival and economic development. Specific examples include the work of the Food and Agriculture Organization of the United Nations (FAO) in creating an enabling environment for food security and livelihood sustainability through capacity-building of rural indigenous organizations[25] and the extensive support from the International Fund for Agricultural Development (IFAD) to demand-driven projects for the economic empowerment of indigenous communities through its loan- and grant-financed projects and the innovative Indigenous Peoples Assistance Facility.[26]

30. Issues of access to and protection of land, territories and resources need to be addressed. Many projects and programmes in this area support and facilitate processes of consultation, dialogue and negotiation between indigenous communities, Governments and third parties. FAO, for example, developed an approach called participatory and negotiated territorial development for areas with competitive and multiple uses of land and natural resources. It facilitates a dialogue among the various actors involved in order to promote a negotiated approach to territorial development. The approach has been successfully used to defend the rights and interests of indigenous peoples in various parts of the world.[27] The United Nations Human Settlements Programme (UN-Habitat), together with the Global Land Tool Network, is currently developing a policy guide to land for indigenous peoples in cities. This guide is expected to serve policymakers worldwide as a tool for supporting the access of indigenous peoples to land and security of tenure in urban areas. At the inter-agency level, the International Land Coalition[28] and its regional platforms in Asia, Latin America and Africa have prioritized the land rights of indigenous peoples. They support the mapping of indigenous territories, innovation in securing the territorial rights of indigenous peoples in the face of increasing commercial pressures on their lands and self-determination for indigenous territorial autonomies within the evolution of a democratic State.

31. The sustainable use of natural resources and the protection of biodiversity needs to be promoted, especially in the light of the fact that indigenous peoples' traditional lands and territories host much of the world's biological diversity. This has been one area of focus of the UNESCO Local and Indigenous Knowledge Systems (LINKS) project, which aims to build dialogue among traditional knowledge holders, natural and social scientists, resource managers and decision makers in order to enhance biodiversity conservation and secure an active and equitable role for local communities in resource governance.[29] The UNESCO Man and the Biosphere Programme is an intergovernmental programme which also works closely with local and indigenous communities for the improvement of the relationship between people and the environment in accordance with the principle of sustainable use and conservation of biological diversity. The Globally Important

[25] See www.fao.org/gender and www.fao.org/economic/esw/esw-home/esw-indigenous-peoples.

[26] See www.ifad.org/english/indigenous/grants.

[27] See www.fao.org/sd/dim_pe2/pe2_050402a1_en.htm.

[28] The International Land Coalition is a global alliance of organizations that brings together members from the United Nations system (the International Fund for Agricultural Development, the Food and Agriculture Organization of the United Nations, the World Food Programme, the United Nations Environment Programme and the World Bank) with a wide variety of civil society organizations, including indigenous peoples' organizations.

[29] See www.unesco.org/links.

Agricultural Heritage Systems initiative supported by FAO provides another instructive example.[30]

32. Strategies for climate change adaptation and mitigation need to be developed by giving voice to the knowledge, experiences and perspectives of indigenous peoples and supporting measures to ensure resilience. For example, the Climate Frontlines forum,[31] a joint initiative of UNESCO and the secretariats of the United Nations Permanent Forum on Indigenous Issues, the Convention on Biological Diversity and the Office of the United Nations High Commissioner for Human Rights, gives voice to indigenous communities and supports local demand-driven projects. The "Many strong voices" programme[32] of the United Nations Environment Programme (UNEP) Global Resource Information Database is aimed at supporting exchange of knowledge and expertise on climate change between the Arctic and small island developing States, and assisting peoples in both regions to support each other in having their voices heard at the local, regional and international levels.

33. Policies and measures for the realization of the right to adequate housing, notably in contexts of displacement and urban migration, need to be fostered. In this regard, UN-Habitat is providing decision makers with guidance to implement policies and programmes that involve indigenous peoples in improving their living conditions in urban areas, building on their know-how and customs and thus promoting their right to adequate housing.[33]

34. Approaches to health care and prevention that are culture- and gender-sensitive and rights-based, building on indigenous peoples' knowledge and responding to their specific needs, need to be promoted and implemented. The United Nations Population Fund (UNFPA) and the United Nations Children's Fund (UNICEF) are applying culture-sensitive approaches to sexual and reproductive health.[34] Notably, UNESCO, UNFPA and UNICEF propose culture-sensitive approaches to HIV and AIDS prevention and care in the context of the Joint United Nations Programme on HIV/AIDS (UNAIDS), building on local assets and taking into account indigenous beliefs, practices and sensitivities about illness, sex and reproduction. They work with indigenous communities and adolescents in different parts of the world.[35]

35. Mother-tongue and intercultural education respecting the rights of the child and principles of non-discrimination in education[36] need to be advanced in order to address the twofold challenge of supporting and promoting the maintenance, use and survival of indigenous cultures, traditions and identity while also providing the knowledge and skills that allow indigenous peoples to participate fully and equally in the national and international community. Examples include the initiatives of UNICEF for the production and dissemination of bilingual educational materials

[30] See ftp.fao.org/sd/SDA/GIAHS/GIAHS-sns-ES_strategicframework_dft2-rev-8_March-051.pdf.

[31] See www.climatefrontlines.org.

[32] See www.manystrongvoices.org.

[33] See, notably, United Nations Human Settlements Programme, *Housing Indigenous Peoples in Cities: Policy Guide to Housing for Indigenous Peoples in Cities* (Nairobi, 2009).

[34] For a concrete example, see the case of the Jambi Huasi health clinic in Otavalo, Ecuador. Available from www.unfpa.org/video/2005/jambi_huasi.htm.

[35] For further details on the work of the United Nations Educational, Scientific and Cultural Organization on culture, HIV and AIDS, see www.unesco.org/culture/aids.

[36] See the Convention on the Rights of the Child (1989) and the Convention against Discrimination in Education (1960).

that draw on indigenous forms of creative expression and the support of UNESCO to programmes that incorporate indigenous local knowledge and language content into school curricula.[37]

36. It is important to defend the creative capacity of indigenous peoples, which takes multiple intangible and tangible forms and regenerates itself through contemporary invention, thus making an outstanding contribution to the common heritage of humanity. These expressions are integral to the cultural and social identities of indigenous and local communities, since they embody know-how and skills and transmit core values and beliefs. Given that "culture" for indigenous peoples embodies a whole way of life that stems from their livelihoods and their relations to the land, projects in this field often touch upon a wide array of development issues. UNESCO works with indigenous peoples in all areas of heritage and cultural expressions, including the safeguarding of indigenous languages, the intangible heritage of indigenous peoples and the protection of indigenous sacred sites and cultural landscapes.[38] WIPO, for its part, has an extensive programme on the protection of traditional cultural expressions and traditional knowledge against misappropriation and misuse.[39]

B. Assessing thematic United Nations programmes from the perspective of development with culture and identity

37. What the different examples above have in common is that they take the specific situation, socio-cultural values, heritage, assets and perspectives of indigenous peoples as a starting point for the intervention. They thus indicate a shift from a deficit and a one-size-fits-all development approach to tailored and diversified ways of addressing critical development issues in line with development with culture and identity. The examples of supporting sustainable livelihoods and food systems in particular illustrate ways to move away from reducing indigenous peoples to being victims of poverty and towards acknowledging their leadership in finding their own solutions and in driving their own socio-economic development based on their perspectives, institutions and world views.

38. Nevertheless, much of United Nations development practice in the public services domain, including health, housing and education, seems to focus on rendering the services more accessible and relevant to indigenous peoples rather than, as stipulated in the United Nations Declaration on the Rights of Indigenous Peoples, reinforcing indigenous peoples' own institutions. Perspectives on this issue may also vary depending on whether indigenous communities still live collectively on ancestral lands (or lands assigned to them in contexts of displacement) or no longer live the communal life but are more dispersed, often in cities. Research

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[37] See, for instance, the project "Village-level documentation and transmission of local environmental knowledge, Solomon Islands". Available from www.unesco.org/links.

[38] See, notably, Robert Wild and Christopher McLeod, eds., *Sacred Natural Sites: Guidelines for Protected Area Managers*, Best Practice Protected Area Guidelines Series, No. 16 (Gland, Switzerland, International Union for Conservation of Nature; Paris, United Nations Educational, Scientific and Cultural Organization (UNESCO), 2008); and Thomas Schaaf and Cathy Lee, eds. *Conserving Cultural and Biological Diversity: The Role of Sacred Natural Sites and Cultural Landscapes*, proceedings of the international symposium held in Tokyo from 30 May to 2 June 2005 (Paris, UNESCO, 2006).

[39] See www.wipo.int/tk/en/folklore/culturalheritage.

indicates that there is apparently a greater willingness to include indigenous peoples in the planning and management of issues regarding nature and the environment than in the planning of urban spaces and communities. More research is required to get a fuller picture of how the United Nations has been able to successfully support indigenous peoples' own institutions within various programme fields and contexts.

39. Indeed, even if we analyse projects and programmes in which culture is at the centre of the intervention, compliance with the principle of development with culture and identity is not obvious or automatic. There have been cases in which cultural heritage projects, for example, applied safeguarding or conservation approaches on behalf of, rather than with, the community concerned. Similarly, projects promoting the cultural expressions of indigenous peoples can be disrespectful of their rights if non-indigenous individuals take the lead in producing cultural expressions of indigenous peoples and then pass these off as their intellectual property.

40. Development with culture and identity, it can be argued, is thus essentially a transversal, intersectoral approach in which processes are more determinant of its successful application than specific subject matters.

C. Identifying adequate participatory methods and programming tools in support of development with culture and identity

41. All United Nations organizations have experience in developing tools, methodologies, mechanisms and capacities that empower indigenous peoples to express and communicate their world views, identity, rights and aspirations in the context of decisions that concern the development of their communities, including consultation and dialogue mechanisms for communication and negotiation with Governments and third parties.

42. Participatory mapping, for example, which is increasingly used by United Nations organizations in their development interventions with indigenous peoples, could be considered a cornerstone of applying development with culture and identity, as it renders the sociocultural assets and knowledge of an indigenous community explicit. It can reinforce a community's consciousness of its specific cultural traditions, resources and institutions so that its members are better prepared to express their rights, visions and priorities when confronted with development interventions initiated by a third party, whether in the area of land use, education, health or conflict prevention. As is now widely acknowledged, however, participatory mapping has to be demand-driven, contextualized and community-owned and controlled to avoid the risks implied in extractive and externally led approaches, such as the risks of folklorization or the violation of peoples' human rights. Unethical and badly conceived mapping can expose communities, their knowledge and the natural environment to exploitation and abuse. More research on analysing concrete examples of participatory mapping from the perspective of development with culture and identity could be insightful in order to further improve United Nations action in this area.

43. The different culture lenses developed in the United Nations system are another example of transversal tools to ensure that development programming respects principles of development with culture and identity. UNFPA, for example, created its culture lens, which is an analytical and programming tool to analyse,

understand and utilize positive cultural values, assets and structures in planning and programming processes.[40] UNESCO developed its cultural diversity programming lens, which is an analytical framework based on the principles enshrined in the UNESCO Universal Declaration on Cultural Diversity. It is aimed at enhancing commitment towards cultural diversity, cultural rights and intercultural dialogue.

44. Communication for development is yet another generic development approach relevant to indigenous peoples, since it emphasizes the need to support two-way communication systems that enable dialogue and that allow communities to express their aspirations and concerns and participate in the decisions that relate to their development. While agencies focus on different dimensions and involve indigenous peoples to various degrees, FAO is known for its experience in supporting specifically indigenous peoples' communication for development as a strategic element to support sustainable livelihoods and self-determined development. The platforms constitute a channel for the exchange of knowledge, proposals and mechanisms to facilitate coordination and cooperation among different stakeholders while searching for common ground with indigenous peoples. At the same time, they tend to favour, arrange and promote the political agendas and programmes regarding indigenous peoples' communication for development. An analysis of different approaches to communication for development is currently being carried out by United Nations organizations and could provide useful insights as to how much potential it offers for operationalizing development with culture and identity (see A/63/180). More generally speaking, awareness-raising about the specific situation of indigenous peoples and their development concerns, as well as the global benefits of sustaining cultural and biological diversity, should continue to be an integral part of the communication strategies of all United Nations organizations.

45. As the analysis above has shown, determining the degree to which United Nations projects and programmes reflect principles of development with culture and identity, notably the principles of self-determination, is complex and challenging. The idea of developing a specific development with culture and identity programming tool to encourage and guide development actors in the analysis of their programmes could be considered. Indeed, successful moves towards implementing development with culture and identity will depend critically on how one goes about development rather than simply on the choice of the subject matter of a specific intervention.

IV. Setting development with culture and identity in motion, notably at the country level: processes and challenges

46. Development with culture and identity is an ambitious approach that requires specific efforts, processes and methodologies in order to be applied effectively, particularly at the country level. Notably, it requires a larger enabling institutional/governance and policy environment, as well as political will, specific knowledge and capacities and adequate financial resources. Otherwise, efforts towards development with culture and identity will only have limited chances of success, and their impact might remain scattered, outside larger national development priorities and strategies.

[40] See www.unfpa.org/culture/culture.htm.

47. The Inter-Agency Support Group, in close dialogue with the Permanent Forum, has identified a number of ideas and processes that suggest how the United Nations system as a whole could take the notion of development with culture and identity forward, considering also the challenges involved.

A. The United Nations Development Group Guidelines on Indigenous Peoples' Issues: a road map for implementing the United Nations Declaration on the Rights of Indigenous Peoples

48. The United Nations Development Group Guidelines on Indigenous Peoples' Issues[41] were adopted by the United Nations Development Group in 2008, giving a concrete inter-agency response to the comprehensive normative framework provided by the United Nations Declaration on the Rights of Indigenous Peoples. Together with the action plan for roll-out and implementation, they provide the overarching road map for operationalizing development with culture and identity at the country level. Their purpose is to assist the United Nations system in mainstreaming and integrating indigenous peoples' issues into processes for operational activities and programmes at the country level.

49. The United Nations Development Group Guidelines highlight a number of interrelated methodological issues which could become critical for setting development with culture and identity into motion at the country level, including respect for and application of the principle of free, prior and informed consent; full and effective participation of indigenous peoples at every stage of any development action that may affect them directly or indirectly; and disaggregated data and indicators regarding the situation of indigenous peoples.

50. One significant example of inter-agency collaboration is the establishment of consultative and participatory mechanisms for engaging with indigenous peoples at the regional and country levels. Examples include the UNICEF consultative group of indigenous leaders in the Latin American and Caribbean region, a mechanism that is now used by the whole United Nations system in that region, consultations by the United Nations Development Programme (UNDP) with indigenous communities in Latin American countries, and the institutionalized participation mechanisms put in place by WIPO and UNEP. Other agencies such as IFAD and UN-Habitat are currently planning the creation of such participation forums.

51. Increased capacity-building efforts with respect to indigenous peoples' issues among United Nations country teams are another recent outcome of the United Nations Development Group Guidelines and its action plan. Training has already been undertaken in Nepal, the Philippines and Ecuador, and will continue over the coming years. In addition, a course was given for Government officials in Ecuador, at the request of the Government, focusing on development, indigenous peoples and interculturality. The secretariat of the Permanent Forum brought together different agencies to develop a resource kit on indigenous peoples' issues and a corresponding training module. A training session for trainers on indigenous issues was organized by the secretariat of the Permanent Forum in June 2009, in cooperation with the ILO training centre in Turin, Italy. Other tools include the ILO

[41] See www2.ohchr.org/english/issues/indigenous/docs/guidelines.pdf.

practice guide for the implementation of indigenous peoples' rights and the new online training website for a one-week course on the rights of indigenous peoples.

52. The development of online communication platforms, such as the above-mentioned Latin America indigenous peoples' communication platform and the community of practice on indigenous peoples' issues is another dynamic area of implementation of the United Nations Development Group Guidelines. Such platforms constitute a channel for the exchange of knowledge, proposals and mechanisms for the coordination and cooperation among different stakeholders committed to indigenous peoples' issues.

B. Consolidating, complementing and articulating relevant legal instruments

53. While international normative frameworks for development with culture and identity are in place to a large extent (see section II above), there is a need to further promote the ratification, effective implementation and monitoring of key normative instruments, both those with a direct focus on the rights of indigenous peoples and those which are geared towards specific aspects of development with culture and identity.

54. With regard to ILO Convention No. 169, the adoption of the United Nations Declaration on the Rights of Indigenous Peoples may provide a renewed momentum for its ratification.[42] Regarding the culture conventions[13] and the Convention on Biodiversity, the extraordinary speed and number of ratifications of those instruments indicates the commitment of the international community to giving greater recognition in national policy to cultural and biological diversity. The ongoing challenge is to identify and support ways and means by which these instruments can best promote the rights of indigenous peoples in their specific contexts. Indeed, in the light of the United Nations Declaration on the Rights of Indigenous Peoples, more research and advocacy are needed to effectively articulate the various instruments relevant to development with culture and identity and their implications for indigenous peoples.

55. The existing legal frameworks for development with culture and identity may in the future be complemented with new standard-setting mechanisms. Significant in this regard are the ongoing negotiations within the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore on the draft provisions for the enhanced protection of traditional knowledge and traditional cultural expressions against misappropriation and misuse. Observer status at the WIPO Intergovernmental Committee has been granted to the representatives of indigenous peoples who have requested it, and many have received financial support from a special voluntary fund when participating. Another example is the recent discussions within UNESCO on assessing the technical and legal aspects of a possible international standard-setting instrument for the protection of indigenous and endangered languages.

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[42] See the report on the Inter-Agency Support Group special meeting on the United Nations Declaration on the Rights of Indigenous Peoples, held in Geneva on 26 and 27 February 2008 (E/C.19/2008/CRP.7).

C. Policies on indigenous peoples at the level of United Nations organizations: a positive factor for development with culture and identity

56. The elaboration of policies, strategies and guidelines on indigenous peoples by individual agencies is yet another important institutional development from the perspective of development with culture and identity. Such policies reflect the application of the principles of the United Nations Declaration on the Rights of Indigenous Peoples in the context of the mandate, strategy and intervention of specific organizations. They have succeeded in giving greater visibility to indigenous peoples' issues within an organization and provide the enabling environment required to develop relevant projects and programmes, networking and the identification of targeted budgets. The elaboration process of these policies itself, which requires the mobilization of committed senior managers and extensive consultations with Member States, has been experienced by agencies as a valuable means of building political commitment and capacity with regard to indigenous peoples' issues.

57. IFAD, which after a long process successfully adopted its policy on engagement with indigenous issues in September 2009, offers a recent example of such an elaboration process. It is worth noting that this policy builds on the cultural heritage and identity of indigenous peoples as assets and pays full tribute to the principles of free, prior and informed consent.[43]

58. Other examples include the World Bank's revised operational policy and bank procedure on indigenous peoples (2005), the Inter-American Development Bank's policy on indigenous peoples (2006), "UNDP and indigenous peoples: a practice note on engagement" (2001) and the policy of the European Bank for Reconstruction and Development (2009). FAO and UNICEF are also in the process of elaborating policies, while UNEP and UN-REDD have developed new guidelines on how to work with indigenous peoples. UNESCO published a handbook entitled "UNESCO and indigenous peoples: partnership for cultural diversity" (2004). The major challenge, however, will be to ensure that staff and stakeholders concerned are adequately informed and trained to put these policies into practice.

D. Challenges in promoting development with culture and identity through United Nations action: an analysis of the current aid architecture

59. While institutional responses to indigenous peoples' issues have gained prominence at the United Nations level, critical barriers to actually involving indigenous peoples in governance processes remain. Even if such obstacles are often beyond the direct control of the United Nations alone, there are still a number of steps agencies can take in order to create an enabling environment to address them. These issues will be explored below through an analysis of the challenges raised by the development aid architecture.

60. The Paris Declaration on Aid Effectiveness (2005), which is an international agreement to increase efforts with respect to the harmonization, alignment and

[43] See www.ifad.org/gbdocs/eb/97/e/EB-2009-97-R-3-REV-1.pdf.

managing of aid, together with the Accra Agenda for Action (2008), emphasize that implementation should be through country systems and that conditionalities should be drawn from developing countries' own policies. There are a number of risks regarding support to indigenous peoples' issues related to the principles of the Paris Declaration. For example, considering that many developing countries, particularly in Africa and Asia, have no formal legislative or policy recognition of the rights of indigenous peoples, there is thus an inherent risk of further exclusion of indigenous peoples in the development process if specific safeguards are not developed. Many indigenous peoples have no, or only weak, participation in parliament, governance structures and national decision-making processes. Often, their needs and priorities are not reflected in development policies and plans, and they do not benefit proportionately from poverty reduction efforts. Also, donors often have weak capacity or hesitate to engage in policy dialogue on indigenous peoples' issues, and may not comply with their own institutional policies on supporting indigenous peoples if recipient countries are reluctant. Furthermore, the lack of a common policy or strategy on support to indigenous peoples (in the context of the commitments stipulated by the Paris Declaration and the Accra Agenda) could possibly undermine the value of individual donor policies regarding support to indigenous peoples. Finally, in many countries adequate data on indigenous peoples are not available, and national statistical bureaux do not always have the capacity to provide disaggregated data. Indeed, the reformed aid architecture itself provides no safeguards to ensure that "effectiveness" does not jeopardize the rights-based approach to indigenous peoples' development.

61. In February 2007, the Organization for Economic Cooperation and Development's (OECD) Development Assistance Committee adopted an action-oriented policy paper on human rights and development, acknowledging that the international human rights framework and the Paris Declaration should reinforce and benefit from each other. This thinking obviously provides an entry point for including the rights of indigenous peoples in development cooperation. A key challenge from the perspective of development with culture and identity, however, is that, while the United Nations Declaration on the Rights of Indigenous Peoples was adopted with an overwhelming majority and presents key human rights instruments to frame collaboration on indigenous peoples' issues, many Governments are still not applying it to set the standards for national policies and development cooperation. There is thus a need for ongoing dialogue among members of the OECD Development Assistance Committee, developing countries, the United Nations system and indigenous peoples on how to ensure that the rights and aspirations of indigenous peoples are addressed and supported in the context of the aid effectiveness agenda. In this regard, it will be important to highlight the multiple benefits of self-driven approaches to development.

V. Conclusion

62. The present paper set out to instigate reflection and dialogue on development with culture and identity from an inter-agency perspective in order to advance the thinking and stimulate ideas for action in the United Nations system regarding development with culture and identity and its applications. To this end, the present paper analysed the theoretical and legal underpinnings of development with culture and identity in United Nations development discourse and normative frameworks, as

well as its implications for the United Nations system in terms of programming, policy and governance processes.

63. A number of key messages arose from this reflection, which are as follows:

(a) While development interventions are intended to bring benefits, they may in fact be detrimental to the target population or community if they are founded on preconceived assumptions about what constitutes "progress". They can indeed perpetuate existing prejudice, exclusion and power imbalances, ultimately undermining the cultures of the peoples concerned. Indigenous peoples are particularly familiar with these negative effects of development programmes;

(b) Indigenous peoples have developed effective methods for managing and caring about their environments, livelihoods and well-being. They also have strategies for coping with social and environmental change. These capacities are valuable assets for sustainable human development. The commitment of development agents at all levels is required to fully recognize diversity and distinctiveness by acknowledging indigenous peoples as creators and agents of development initiatives. Such self-driven approaches may further the effectiveness and sustainability of development programmes if they are grounded in locally tailored, environmentally and culturally appropriate strategies that are more likely to be supported and continued by the population and communities concerned;

(c) Development with culture and identity clearly draws from, embraces and creates synergies between critical conceptual developments and legal advances in United Nations development efforts, effectively linking principles of human development, sustainability (both urban and rural), gender and cultural and biological diversity within a larger human rights framework;

(d) Development with culture and identity, as a specific approach to development embedded in the United Nations Declaration on the Rights of Indigenous Peoples, requires new ways of going about development that emphasize full participation and the need for new governance and institutional arrangements;

(e) In addition to much-needed institutional commitment, a development with culture and identity approach will require genuine intercultural dialogue between indigenous and non-indigenous partners to reinforce mutual respect and appreciation for their respective world views, values, cultures and socio-economic institutions. These provide an invaluable reservoir of knowledge and concepts about well-being and thus a dynamic resource for sustainable development.

64. Based on these key messages, priority areas for action can be determined as follows:

(a) As the United Nations Declaration on the Rights of Indigenous Peoples provides a comprehensive and key framework for development with culture and identity, it needs to be mainstreamed into all United Nations policies and programmes in order to put the new approach into practice;

(b) The United Nations Development Group Guidelines, together with the action plan, should be implemented, as they provide a useful road map for the United Nations to promote the implementation of development with culture and identity, notably at the country level;

(c) A challenge for all efforts to promote development with culture and identity is the fact that, even if the current aid architecture acknowledges a human rights-based approach to development cooperation, in reality the rights enshrined in the United Nations Declaration on the Rights of Indigenous Peoples are not systematically respected. It will therefore be important for all stakeholders, including the United Nations, to continue the dialogue with Governments to ensure that efforts to promote development with culture and identity receive the support they require;

(d) Taking development with culture and identity forward through action by the United Nations will require careful assessments through the lens of key principles and norms, such as self-determination, cultural rights and cultural and biological diversity. In other words, development with culture and identity is an ambitious and challenging approach, and development programmes and projects cannot be automatically labelled as examples of good practice of development with culture and identity just because they address indigenous peoples' issues.

65. Crucially, several issues emerge from the present paper that merit more reflection and ongoing dialogue in order to further develop the evolving notion of development with culture and identity:

(a) Development with culture and identity has a complex legal underpinning that connects different existing human rights standards and ethical principles, all of which are indivisible. Development with culture and identity therefore cannot be merely equated with self-determination in absolute terms, nor do culturally sensitive development approaches ensure automatic compliance with the concept of development with culture and identity. Balancing the right to self-determination with other key rights and principles of development with culture and identity is an ongoing challenge and could become a new focus of collaborative action-oriented research between indigenous peoples and United Nations organizations;

(b) There are possible tensions between indigenous peoples' holistic cosmovisions, which see the human being and nature as indivisible, and the anthropocentric worldview that anchors much of United Nations development discourse, emphasizing people-centred approaches. The discussions and work on linking cultural and biological diversity have opened up new opportunities in the United Nations to address this gap, but more intercultural dialogue is required in the context of development with culture and identity;

(c) Indigenous identities, like all identities, are complex, fluid and of multiple natures, and thus cannot be confined to a single definition. Therefore, all stakeholders have to be cautious of homogenizing the cultures and identities of indigenous peoples. It would be insightful to explore further the place of plural identities and multiple cultural affiliations of indigenous individuals and communities, such as those living in urban areas, for example, in the context of policy and programming for development with culture and identity.

66. It is hoped that the present paper will bring fresh energy to the debate on development with culture and identity as a horizon for development cooperation with indigenous peoples, articulating further the concepts, norms and practices pertaining to this new approach.

United Nations E C.19/2010/18

Economic and Social Council

Distr.: General
4 March 2010

Original: English

Permanent Forum on Indigenous Issues
Ninth session
New York, 19-30 April 2010
Item 3 of the provisional agenda*
Discussion on the special theme for the year, "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples"

Results of the Copenhagen meeting of the Conference of the Parties to the United Nations Framework Convention on Climate Change; implications for indigenous peoples' local adaptation and mitigation measures

Summary

The present report was compiled by Special Rapporteurs Victoria Tauli-Corpuz and Lars-Anders Baer. It examines the outcomes of the Climate Change meetings that took place during 2009 and how these processes impact on indigenous peoples' local adaptation and mitigation measures.

* E/C.19/2010/1.

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I. Introduction

1. At its seventh session in 2008, the United Nations Permanent Forum on Indigenous Issues appointed two of its members, Victoria Tauli-Corpuz and Lars-Anders Baer, as Special Rapporteurs to prepare a report on various models and best practices of the climate change mitigation and adaptation measures being undertaken by indigenous peoples in various parts of the world. The special rapporteurs, in collaboration with indigenous peoples, were requested also to prepare a draft declaration of action on climate change and indigenous peoples, which could include a road map for indigenous peoples towards the 2009 Conference of the Parties to the United Nations Framework Convention on Climate Change (the "Copenhagen Summit") and beyond. These materials were to be presented to the Permanent Forum at the eighth session in 2009.[1]

2. Subsequently, several reports and video productions on local adaptation and mitigation measures of indigenous peoples were completed by indigenous peoples and various non-governmental organizations (NGOs). Additionally, three regional summits on indigenous peoples and climate change were held in 2009, one each in Asia, Africa and Latin America, plus a global summit in Alaska, United States of America, in which Permanent Forum members participated. The Indigenous Peoples' Global Summit on Climate Change, held in Anchorage, Alaska, on 24 April 2009, adopted the Anchorage Declaration,[2] which contains the main demands that the indigenous peoples made on Member States and the United Nations Framework Convention on Climate Change, as well as a road map towards the Copenhagen Summit and beyond. The reports of these summit meetings were submitted to the Permanent Forum at its eighth session in 2009.

3. In the light of these activities, the special rapporteurs prepared the present report for submission to the Permanent Forum at its ninth session in order to assess the results of the Copenhagen Summit and its implications for indigenous peoples. It was felt that it would be useful to undertake an analysis of what occurred during the meetings of the United Nations Framework Convention on Climate Change and the fifteenth meeting of the Conference of Parties in Copenhagen during 2009 and consider the implications of this for indigenous peoples in terms of climate change adaptation and mitigation measures, building on the findings of two earlier reports.[3,4]

II. Indigenous peoples, climate change and the centrality of equity and justice

4. Indigenous peoples are estimated to number between 370 million and 500 million people; they account for 80 per cent of the world's cultural and biological diversity but occupy only about 20 per cent of the world's land surface.[5]

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[1] E/2008/43 and E/C.19/2008/13.

[2] E/C.19/2009/CRP.9.

[3] E/C.19/2008/10.

[4] E/C.19/2008/13.

[5] See University of Minnesota Human Rights Center, *Study Guide: The Rights of Indigenous Peoples*, which is available online at www1.umn.edu/humanrts/edumat/studyguides/indigenous.html.

The fact that indigenous peoples have survived climate changes which have taken place over thousands of years and that they continue to survive despite their high vulnerability is, in itself, a testament to their resilience and their tremendous capacity to adapt. However, that capacity is being challenged in the face of accelerating climate change and the grossly inequitous and unjust way such issues are addressed at the global and national levels.

5. The concentrations of carbon dioxide in the atmosphere globally ranged between 200 and 300 parts per million (ppm) for about 800,000 years, but the concentration of this gas has increased to 387 ppm in the past 150 years since the start of the Industrial Revolution.[6] Past emissions are already "locked in" and will cause adverse impacts for the next 30 to 40 years, notwithstanding any reduction in emissions in coming years. The Intergovernmental Panel on Climate Change (IPCC) noted that, even if global emissions were reduced to pre-2000 levels and atmospheric levels stopped rising, the current momentum of global warming would continue to affect the Earth's natural systems for hundreds of years.[7] With the continuing devastation that is occurring in indigenous peoples' territories, owing to increased or inadequate precipitation, stronger and longer-lasting hurricanes, cyclones and typhoons, long bouts of drought, the melting of glaciers and permafrost, increased flooding and rising sea levels, etc., the urgent need to enhance indigenous peoples' adaptive capacities and resilience and decrease their vulnerabilities cannot be overemphasized.

6. A direct relationship exists between increasing resilience and decreasing vulnerability of indigenous peoples in terms of their control over their lands, territories and resources, the strength of their social relationships and cultures and the vitality of their traditional knowledge systems, as well as their continuing practice of traditional livelihoods and natural resource management systems. Clearly, indigenous peoples' practical, respectful and spiritual connections to, and understanding of, their ancestral territories and ecosystems have ensured their resilience and continuing survival in the face of the adverse impacts of climate change and the efforts of colonialists to eliminate or assimilate them.

7. However, it is also this relationship with, and dependence upon, ecosystems that makes indigenous peoples highly vulnerable. The devastation wrought upon fragile ecosystems increases proportionally with increased emissions of greenhouse gases (GHG). Their vulnerabilities are further compounded by their disadvantaged socio-economic situations brought about by colonialism, continuing racism and discrimination and globalization processes which shape national economies into a "one-size-fits-all" unsustainable economic development paradigm.

8. Generally, climate change is treated as a scientific or environmental issue. However, the challenge is to go beyond that view in order to see the political, economic and social contexts and implications of this problem. The IPCC Fourth Assessment Report[7] concluded that GHG emissions are caused not just by natural factors but mainly by anthropogenic or human factors. Climate change negotiations

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[6] See World Bank, *World Development Report 2010: Development and Climate Change*, Washington, D.C., World Bank, 2009.

[7] See Intergovernmental Panel on Climate Change (IPCC), S. Solomon, D. Qin, M. Manning, Z. Chen, M. Marquis, K. B. Averyt, M. Tignor and H. L. Miller, eds., *Climate Change 2007: The Physical Science Basis*. Contribution of Working Group I to the Fourth Assessment Report of IPCC, Cambridge, United Kingdom, and New York, Cambridge University Press, 2007.

have to deal with the political economy of burden-sharing with regard to emission reductions and the costs that will be incurred for implementing adaptation and mitigation measures. Since climate change is the result of the economic and political systems governing the world today, it stands to reason that these systems have to be altered not only to radically lower or halt GHG emissions but also to address the question of equity and justice. This implies that there should be radical transformations of national economies and growth strategies. The inequity between rich and poor countries and between poor and rich people within countries cuts across all the issues being negotiated within the United Nations Framework Convention on Climate Change[8] and the Kyoto Protocol to the Convention. The complexities of all these issues make climate change talks the most difficult of those under negotiation[9] globally, as had been witnessed at the Copenhagen Summit in December 2009.

9. The failure to reach agreement in Copenhagen is evidence that, unless equity and justice become the core principles underpinning the processes and substance of climate change negotiations, the solutions being proposed will not be enough to prevent impending climate-related catastrophes. Data show that Annex I parties to the Convention have fallen short in meeting their commitments, global temperatures are still rising and GHG emissions are still increasing. A climate-responsive and -sensitive sustainable development path, which is low-carbon or carbon neutral while allowing for pro-poor and ecologically and socially sustainable growth, cannot be achieved without putting equity and justice at the core.

10. Since 1950, three fourths of the total GHG emissions found in the atmosphere are the direct result of industrial development and modern lifestyles in Annex I parties; yet those countries account for only 21 per cent of the world's population.[10] Such high levels of GHG emissions are causing the climate variability the world is going through and the adverse impacts of that variability. For countries and people who have not caused climate change but are bearing the heaviest brunt of its impacts, adaptation and enhancing resilience are higher priorities than mitigation. Rich countries have an obligation to provide the finances and technologies needed by the most vulnerable countries and people, which includes indigenous peoples, to adapt. Annex I parties have to adhere strictly to their legal obligations to cut back emissions on the domestic front, instead of relying on carbon credits which they can buy from developing countries.

11. The foregoing description elaborates on what is meant by the terms "climate equity" and "climate justice". Those responsible for polluting the atmosphere should bear the burden for mitigating the effects of the damages caused by their actions, compensate the victims who are suffering from the damage their actions caused and furnish the support necessary to enable those most adversely affected and vulnerable to adapt to the situation. It is highly unjust and immoral to ask the most vulnerable and the poorest countries and people to bear the burden of mitigating a problem that they did not create. A key principle enshrined in the Convention and the Kyoto Protocol to the Convention, known as common but differentiated responsibilities,

[8] See United Nations, *Treaty Series*, vol. 1771, No. 30822.

[9] FCCC/CP/1997/7/Add.1, decision 1/CP.3, annex.

[10] Barbara Adams and Gretchen Luchsinger, *Climate Justice for a Changing Planet: A Primer for Policy Makers and NGOs*, New York and Geneva, United Nations Non-Governmental Liaison Service, 2009, p. 5.

captures equity in relation to burden-sharing between countries and people, as far as mitigation and adaptation are concerned.

12. Making adaptation a priority does not mean that indigenous peoples would not continue to undertake mitigation measures. That is an inherent part of their self-assigned roles as custodians and stewards of their lands. The sustainable use and management of indigenous peoples' ecosystems and the natural resources found therein, as well as their low-carbon or carbon-neutral lifestyles and livelihoods have contributed to the mitigation of climate change effects. Additionally, their successful struggles against the extraction of fossil fuels from their territories and against deforestation have kept carbon under the ground and in trees and soil. These are the most direct contributions of indigenous peoples to climate change mitigation, which unfortunately, are not accounted for and remain uncompensated.

13. Indigenous peoples' natural resource management practices are place-based, time-tested, climate-resilient, collectively managed, cost-effective and sustainable. The replication and upscaling of these practices, the recognition of the indigenous knowledge systems behind these practices and the provision of adequate support and incentives for these practices to continue should be ensured and integrated as part of global and national mitigation measures.

14. The imperative of enhancing the resilience of biocultural systems is generally understood and practised by indigenous peoples not only as a part of their adaptation but also as a measure to strengthen mitigation of climate change effects. Indigenous peoples view the world as an interconnected whole, with any intervention in one area having a direct relationship with another area. However, adaptation cannot be sustained if mitigation is not effected; the capacity to mitigate is related to how people are adapting and making their ecosystems more resilient. The protection of indigenous peoples' right to their lands, territories and resources and their right to self-determination cannot be treated separately from their capacities in pursuing effective adaptation and mitigation measures. Thus, previous reports[3,4] emphasized the need for adapting the human-rights-based and ecosystem-based approaches to adaptation and mitigation measures. Such approaches will be discussed in later sections of the present report.

III. Analysis of some documents on adaptation and mitigation issued before and during the fifteenth meeting of the Conference of Parties

15. The United Nations Framework Convention on Climate Change has organized expert workshops on the sharing of information on existing adaptation practices, experiences, needs, gaps, opportunities and constraints, as well as on the contribution of traditional knowledge to adaptation and local coping strategies for adaptation. One such workshop on adaptation planning and practices, held in Rome, from 10 to 12 September 2007, identified gaps and needs in stakeholder engagement and planning instruments, underscoring that, "The planning process needs to take into account social, economic or cultural consequences of adaptation measures. For example, relocation of communities threatens their cultural identity, as is the case for Pacific islanders or Inuit living in the Canadian Arctic".[11] The workshop

[11] FCCC/SBSTA/2007/15.

acknowledged that traditional knowledge and practices which are the result of long-term adaptation to existing climatic conditions could contribute to developing adaptation planning and practices.

16. During intersessional meetings in 2009 and at the fifteenth meeting of the Conference of Parties in Copenhagen, the draft decision[12] negotiated by the Adaptation Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol, at its tenth session, in Copenhagen, from 7 to 15 December 2009, states the following concerning the Parties:

> *Affirms* that enhanced action on adaptation should be undertaken in accordance with the Convention and the provisions thereunder; follow a country-driven, gender-sensitive, participatory approach to adaptation; be based on and guided by the best available science, traditional knowledge, as appropriate, and good governance and mutual accountability, with the aim of integrating adaptation actions into relevant social, economic and environmental policies.

17. That draft decision invites all Parties to undertake planning, prioritizing and implementing adaptation actions, including specific projects and programmes, and actions identified in national adaptation programmes of action of least developed countries, national communications, technology needs assessments and other relevant national documents (para. 4 (a)). The Parties are also invited to undertake impact, vulnerability and adaptation assessments, including assessments of financial needs as well as economic, social and environmental costs and benefits of adaptation options (para. 4 (b)). It further invites the Parties to develop means to incentivize the implementation of adaptation actions and other ways to enable climate-resilient development and reduce the vulnerability of all Parties (para. 4 (d)). The draft decision invites all Parties to build resilience of socio-economic and ecological systems, including through economic diversification and sustainable management of natural resources (para. 4 (e)).

18. While there is no specific reference to indigenous peoples in the draft decision on enhanced action on adaptation, the issues are still relevant to them. Adaptation processes are basically local, as the direct impacts of climate change are felt locally. Responses should be tailored to meet the specific needs of the communities affected and the specific characteristics of their ecosystems. Assessments of key vulnerabilities of key regions and communities and the differentiated consequences of climate change for different social groups within communities are components of adaptation. It is crucial therefore that indigenous peoples take part in the development, implementation and monitoring of national adaptation programmes of action, national communications and technology needs assessments. Adaptation measures which are undertaken autonomously by indigenous peoples should be integrated into national adaptation plans and supported by Governments and the donor community in the form of finance, technology, policy reforms and development. Enhancing their capacities and local empowerment, as well as building on traditional knowledge and expertise are essential elements of long-term adaptation strategies.

19. Indigenous peoples in various parts of the world are using their traditional knowledge to undertake their own impact assessments of their vulnerability to

[12] See FCCC/AWGLCA/2009/17, annex I.B.

climate change and identifying a range of responses to adaptation. Such assessments help indigenous peoples to design appropriate adaptation and response strategies and influence policies at the national and global levels. These initiatives are undertaken because of the concern that the existing frameworks used for assessing impacts of climate change and mitigation measures and the development of adaptation strategies do not recognize or integrate indigenous worldviews, epistemologies, knowledge and practices. Indigenous peoples have used their observations of the natural environment in such ways that the behaviour of plants and animals, as well as clouds, mist and wind is used to make weather forecasts, determine the best time to plant crops and prepare for impending disasters. More conscious efforts should be made to combine indigenous traditional knowledge with modern science for the purposes of adaptation and mitigation.

20. One of the weaknesses in climate change reports is the inadequate analysis of the social impacts of climate change, which includes the negative impacts of some adaptation and mitigation measures on indigenous peoples. In the United Nations Framework Convention on Climate Change the Parties are looking at the potential economic and social consequences of climate responses. Very little is said about the consequences of some renewable energy projects, such as mega-hydroelectric dams, on indigenous peoples, for instance. In order to address this gap, the Permanent Forum chose as the special theme for its 2007 session: "Climate change, biocultural diversity and livelihoods: the stewardship role of indigenous peoples and new challenges".

21. The text on adaptation recognizes the need to build the resilience of socio-economic and ecological systems through economic diversification and sustainable management of natural resources. Indigenous peoples, since time immemorial, have undertaken conscious efforts to protect and sustainably manage and use biologically diverse ecosystems, which are the source not only of their livelihoods and survival but also the basis of their diverse cultures and knowledge systems. The continuation and further development of diverse land, water and natural resource management systems and knowledge systems, cultures and governance systems of indigenous peoples are equally important in reducing their vulnerability and in supporting their climate-resilient and self-determined development processes.

IV. Agreements reached on reducing emissions from deforestation and forest degradation (REDD-plus)[13] and the ways forward

22. Another draft decision which was consolidated in Copenhagen is referred to as REDD-plus.[14] The Ad Hoc Working Group on Long-Term Cooperative Action under the Convention is the main body under which REDD-plus was discussed and negotiated. The findings of the IPCC Fourth Assessment Report,[7] that deforestation is the source of 17 to 20 per cent of the total carbon emissions and that there is more

[13] In the present report, "REDD-plus" refers to "policy approaches and positive incentives on issues relating to reducing emissions from deforestation and forest degradation in developing countries; and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks in developing countries".

[14] See FCCC/AWGLCA/2009/17, annex I.G.

carbon in the world's forests than in the atmosphere form the basis of REDD-plus. In addition to the IPCC report, another publication[15] on the economics of climate change had earlier highlighted that reducing emissions caused by deforestation and forest degradation was a cost-effective approach to mitigation.

23. It is important to note that the REDD-plus draft decision, negotiated before and during the fifteenth meeting of the Conference of Parties, is the only such material to contain references to the rights of indigenous peoples and the United Nations Declaration on the Rights of Indigenous Peoples, as well as the need to ensure indigenous peoples' full and effective engagement and to recognize the importance of their traditional knowledge. Methodological guidance for drafting REDD-plus was rendered by the Subsidiary Body for Scientific and Technological Advice of the United Nations Framework Convention on Climate Change[16] in order to ensure the full and effective engagement of indigenous peoples and local communities. Owing to the sustained efforts of indigenous peoples since the United Nations Climate Change Conference held in Bali, Indonesia, in 2007, there have been several achievements: indigenous peoples have become actively engaged in the REDD-plus process and links have been established with Governments and NGOs that are keen to have REDD-plus included in the agreements reached at United Nations climate change conferences.

24. These developments are groundbreaking. Never before in the history of the United Nations Framework Convention on Climate Change process has any document referred to human rights much less indigenous peoples' rights. Whenever indigenous peoples raised the issue of rights in the past, they were told that the United Nations Framework Convention on Climate Change is concerned with reducing GHG emissions — not about rights. During the meeting of the previously mentioned Subsidiary Body at the time of the United Nations Climate Change Conference in Poznań, Poland, in 2008, when indigenous peoples and supportive Governments were asserting that the United Nations Declaration on the Rights of Indigenous Peoples should be included in the decision, the Parties said that such policy issues should be addressed by the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention. However, because REDD-plus is about tropical forests and, as the last remaining forests are found mostly in indigenous peoples' territories, the assertion of these facts left the Parties with no choice but to acknowledge indigenous peoples' rights.

25. It took tremendous effort from indigenous peoples, under the umbrella of the International Indigenous Peoples Forum on Climate Change and with the help of supportive Parties and NGOs, to get their point across. The paragraphs which are no longer in brackets (except for a few words) and which are operational in nature are as follows:[14]

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[15] Nicholas Stern, *Stern Review on the Economics of Climate Change*, Cambridge, United Kingdom, Cambridge University Press, 2006.

[16] This body advises the United Nations Climate Change Conference about technological, scientific and methodological matters. In relation to REDD-plus, it gives guidance on issues such as how to measure, report and verify emission reductions; and how to define accurate baselines; as well as on the scope of REDD-plus.

2. *Further affirms* that when undertaking activities referred to in paragraph 3 below, the following safeguards should be [promoted] [and] [supported]:

...

(c) Respect for the knowledge and rights of indigenous peoples and members of local communities, by taking into account relevant international obligations, national circumstances and laws, and noting that the General Assembly has adopted the United Nations Declaration on the Rights of Indigenous Peoples;

(d) Full and effective participation of relevant stakeholders, including in particular indigenous peoples and local communities in actions referred to in paragraphs 3 and 5 below;

(e) Actions that are consistent with the conservation of natural forests and biological diversity, ensuring that actions referred to in paragraph 3 below are not used for the conversion of natural forests, but are instead used to incentivize the protection and conservation of natural forests and their ecosystem services, and to enhance other social and environmental benefits.

26. An additional paragraph identifies further approaches to be taken:

6. *Requests* developing country Parties when developing and implementing their national strategy or action plan, [or subnational strategies] to address, inter alia, drivers of deforestation and forest degradation, land tenure issues, forest governance issues, gender considerations and the safeguards identified in paragraph 2 above, ensuring the full and effective participation of relevant stakeholders, inter alia, indigenous peoples and local communities.[14]

27. In Copenhagen, the Subsidiary Body completed the programme of work that it had started in Poznań concerning the agenda item entitled "Reducing emissions from developing countries: approaches to stimulate action". The result was a draft decision on methodological guidance for activities relating to REDD-plus.[17] The portions of the text which are relevant for indigenous peoples are as follows:

Recognizing the need for full and effective engagement of indigenous peoples and local communities in, and the potential contribution of their knowledge to, monitoring and reporting of activities relating to decision 1/CP.13, paragraph 1 (b) (iii).

...

1. *Requests* developing country Parties ...

(a) To identify drivers of deforestation and forest degradation resulting in emissions and also the means to address these;

...

3. *Encourages*, as appropriate, the development of guidance for effective engagement of indigenous peoples and local communities in monitoring and reporting.

[17] FCCC/SBSTA/2009/L.19/Add.1.

28. That draft decision is an improvement on what had emerged in Poznań because it uses the term "indigenous peoples" instead of "indigenous people". However, it still falls short of what indigenous peoples had proposed: (a) mentioning the relevance of the United Nations Declaration on the Rights of Indigenous Peoples in developing methodologies on REDD-plus; and (b) the full and effective engagement of indigenous peoples should not be limited only to monitoring and reporting but should also include engagement in the design of REDD-plus, as well as its implementation. Another proposal calls for the holding of a workshop for experts to discuss the guidance model for effectively engaging indigenous peoples and local communities. There should be a concerted effort on the part of indigenous peoples and their supporters to push for organizing such a workshop as this would furnish an opportunity to elaborate further what effective engagement means and how it should be carried out.

29. Many indigenous peoples who have been influencing the REDD-plus negotiations believe that, while there are many risks and perils in REDD if it is implemented incorrectly, it is still important to be engaged in the process because this is an area where the direct link between rights and climate change solutions is very obvious. The main slogan of the indigenous peoples' caucus was "No Rights no REDD". Unless rights and equity are integrated in the design, implementation and monitoring of REDD-plus it is bound to fail.

30. There are many serious concerns about REDD because of the way in which it was originally conceived and the way it is being shaped into part of the carbon trading mechanism, which Annex I parties could use to meet some of their obligations under the Kyoto Protocol. One concern is that, instead of cutting back their GHG emissions on the home front, the Annex I parties would just buy cheap forest carbon credits from tropical developing countries which are implementing REDD-plus. This would reduce the pressure on Annex I parties to cut their own emissions. Therefore, the Annex I parties could continue with business-as-usual which, in the end, would not result in any substantial cuts in emissions. If forest carbon becomes part of the carbon market, speculative or hedging activities ("subprime carbon") would be facilitated. The experience with the global financial and economic crisis, which was spurred by financial liberalization and deregulation in the financial sector, demonstrates what could happen to the global carbon market. This is why there is a strong preference that forests should not be used as offsets.

31. There is a long history of violation of the tenurial rights of indigenous peoples to their forests and resources and of the mismanagement of forests by developing countries. The forest laws and forestry master plans of most nation States were likewise designed to give full control and ownership of the forests to the State, totally ignoring the fact that many of these forests are collectively owned and managed by indigenous peoples. Many forest-protection efforts failed because forest-dwelling and -dependent indigenous peoples were excluded and their tenurial rights to their forests and forest resources were not respected. The International Institute for Environment and Development completed a study on land and resource tenure issues that concludes:

> Resource tenure — the systems of rights, rules, institutions and processes regulating resource access and use — is key to shaping the distribution of risks, costs and benefits. Secure tenure gives local people more leverage in relations with government and the private sector. Insecure tenure, on the other

> hand, makes them vulnerable to dispossession — which could be a major concern if REDD increases land values and outside interest.[18]

32. Good forest governance is another key element for the success of REDD-plus. It is known that, in most tropical forest countries, corruption is most intense in the forestry sector. Part of good governance involves recognition of the rights of indigenous peoples to their forests and the resources therein. In assessing State ownership of forests, a recent study by the Rights and Resources Initiative stated:

> Governments still declare ownership of about 65 per cent of the world's forests, while only about 9 per cent are legally owned or designated for use by communities and indigenous peoples. And national and local leaders may become the target of efforts to use bribery to obtain forest-related agreements that fail to consider the rights of those most affected.[19]

33. Addressing the drivers of deforestation, such as destructive logging, infrastructure development and the conversion of forests into agribusinesses or extractive industries (oil, gas, minerals), has tremendous implications in terms of actions and policy reform. The people behind these drivers are usually the most economically and politically powerful players within and outside a country. Thus, it was significant that the REDD-plus documents contained text that stressed the need to identify drivers of deforestation and forest degradation, as well as ways to address these issues. One weakness is that the call for such action is limited to developing countries only; developed countries have not been asked to do so. Indigenous peoples who were part of the Government negotiating panels and supportive Governments insisted that the wording should refer to "developing and developed countries", but their intervention was not included in the drafts. As mentioned previously, it is known that international trade in timber, whether illegal or legal, mining operations by foreign corporations, among other such activities, are also drivers of deforestation. Thus, it makes sense to look at the drivers not only within developing countries but also beyond.

34. Indigenous peoples who are engaged in the REDD-plus process at the global, national and local levels are not oblivious to the actual and potential perils and realities. It is precisely these sad experiences of State and market mishandling of tropical forests and discriminating against indigenous peoples that compelled them to assert that they should have a major say in how REDD-plus should be designed, implemented and monitored. Their resolve to ensure that safeguard mechanisms and respect for the rights of indigenous peoples are made an integral part of the REDD-plus agreement has met with success, so far, judging from the previously cited draft text. Many indigenous peoples just refuse to be victims any more. They have their own agency and in the face of all the problems they face, their options range from non-participation to active participation or engagement. In the case of REDD, some are actively engaged in helping to shape its design and others are involved mainly in critiquing the agreement. Both approaches are useful and demonstrate the operationalization of the right to self-determination.

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[18] See Lorenzo Cotula and James Mayer, *Tenure in REDD: Start-point or Afterthought?* London, International Institute for Environment and Development, 2009.

[19] Liz Alden Wily, David Rhodes, Madhu Sarin and Phil Shearman, *The End of the Hinterland: Forests, Conflict and Climate Change*, Washington, D.C., Rights and Resources Initiative, 2010.

35. Yet, there is a long way to go in relation to how these aspects will be translated into action in the global and national arenas. The issues that remain unresolved by the fifteenth meeting of the Conference of Parties relate to the scale of implementation (acceptance of subnational implementation and monitoring), whether REDD-plus is part of the nationally appropriate mitigation actions or the low GHG emissions strategies; whether it is part of the measuring, reporting or verifying measures for the support furnished by developed countries, or the commitment to those measures for REDD-plus activities and results-based actions in a phased approach; and whether the sources of finance will be from public funds, or from financial markets and private investments, or a combination of both.

36. The Copenhagen Accord,[20] the highly critiqued outcome of the Copenhagen Summit, contains language which recognizes the crucial role of REDD and the need to enhance the removal of GHGs from the atmosphere by forests and to incentivize such actions through mobilization of funds from developed countries. The Accord also mentions including REDD-plus in the list of activities which need to benefit from scaled-up, additional, predictable and adequate funding.

37. While REDD-plus is recognized in the Copenhagen Accord, which links it with the issue of financing, it is clear that the agreement can work only within the context of broad, legally binding, ambitious overall global targets for emission reductions, primarily by Annex I parties and high-level voluntary commitments by developing countries that are now major emitters of GHGs. This does not mean, however, that indigenous peoples are abandoning the gains achieved so far. They should still build upon these gains in future negotiations. Specific recommendations that would enable them to do so are contained in the present report's concluding section.

V. Copenhagen Accord

38. There are very serious concerns about how the Copenhagen Accord came about, what it contains and what is missing from it. However, the real outcome of the Copenhagen Summit are the draft texts prepared by various working groups. After the United Nations Climate Change Conference in Bali, Indonesia, in 2007 and the adoption of the Bali Action Plan, the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention started working through a multilateral process leading up to the time of the Copenhagen Summit. There was considerable progress in the previously mentioned Long-Term Cooperative Action Working Group but not in the Ad Hoc Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol. The two-track approach defined under the Bali Action Plan involves the holding of parallel negotiations in the two ad hoc working groups. After many hours of meetings, the two working groups produced drafts that had been prepared during their negotiations.

39. One of the major disagreements between Annex I and non-Annex I parties involves the legal form of the Copenhagen outcomes. Since the time of the Bali Conference, the Annex I parties wanted to eliminate the Kyoto Protocol and replace it with a new, single legally binding agreement which would include the United States and major emerging economies, namely Brazil, China, India and South

[20] The Copenhagen Accord is available online from www.unfccc.int.

Africa. This is the reason why there has been little progress in the Working Group on the Kyoto Protocol, as most of the developed country parties to the Kyoto Protocol were not presenting individual targets for emission reduction for the second commitment period. In fact, their actions and statements indicated that they wanted the Kyoto Protocol to end and be replaced with a new legally binding protocol. Drafts of a Copenhagen protocol composed by NGOs and submitted by some Parties were distributed in meetings held in Bonn, Germany, in mid-2009. The Group of 77 and China, on the other hand, wanted two legal outcomes: an amended Kyoto Protocol, which would contain commitments of Parties for a second commitment period and a package of United Nations Framework Convention on Climate Change Conference of Parties decisions from the negotiations of the Long-Term Cooperative Action Working Group, which would include comparable, legally binding emission cuts from the United States. Additionally, these decisions would include agreements on a long-term shared vision, which would set the aggregate global emission reductions targets; mitigation measures, which would include REDD-plus; and adaptation, finance, technology transfer and capacity-building measures.

40. The draft accord was not accepted by consensus at the fifteenth meeting of the Conference of Parties and the Copenhagen Summit only "took note" of it but did not "adopt" it. The process of developing the Copenhagen Accord and the failed attempt to get it adopted has weakened the multilateral system considerably. Below are some implications of the Copenhagen Accord culled mainly from analyses of NGOs, such as South Centre,[21] Third World Network, Friends of the Earth and Greenpeace, among others, and the views of the special rapporteurs.

(a) **Weakens multilateralism and the global climate policy framework.** The Accord lays the foundation for weakening the Kyoto Protocol as a multilateral treaty instrument for developed countries' binding emission reduction commitments and the United Nations Framework Convention on Climate Change, as the primary multilateral treaty for global action on climate change. Those who pushed the draft accord say that it was not efficient for obtaining a global agreement negotiated by 194 parties; an alternative would be to bring together a few Parties and get them to agree first before getting that agreement adopted by the wider group. However, this approach would totally undermine multilateralism, which the United Nations stands for, and it would also weaken the global climate policy framework, which is owned by both developed and developing countries.

(b) **Bottom-up approach trumps the top-down approach.** The Kyoto Protocol sets aggregate emission targets which Annex I parties should collectively achieve; this is referred to as the "top-down approach". Arrangements are made which determine the share of each party, together with a compliance system. The Copenhagen Accord would replace this arrangement with a "bottom-up" approach and a voluntary pledge-based regime. Each country could submit its own targets, without subjecting them to agreement by all Parties to the Convention. This approach would be the road towards letting Annex I parties evade their legal obligations under the Kyoto Protocol and allow them to set lower aggregate and individual targets, which later could be seen in their submission of targets at the end

[21] See Martin Khor, "After Copenhagen, the way forward", *South Bulletin*, South Centre, Geneva; available online at www.southcentre.org/index.php?option=com_content&task=view&id=1233&Itemid=287.

of January 2010 in completing the appendix 1 table of the Accord. The purpose of any global regime, whether an environmental legal regime or a human rights regime, is to establish global or international standards to which members should adhere.

(c) **Ignored the science; did not establish an aggregate reduction target for global emissions; and did not include a road map to keep global warming below 2 degrees Celsius.** The Accord does not elaborate on how the 2 degrees Celsius global temperature target could be met and it does not mention the target of an atmospheric carbon dioxide concentration of 350 ppm. It also does not establish an aggregate midterm target (by 2020) for developed countries to cut their GHG emissions by 80 per cent, which is the baseline and reference point for their individual mitigation targets, and is consistent with the scientific position (of 40 per cent reduction from 1990 levels by 2020). Further, it failed to establish a long-term goal, such as the 80 per cent reduction by 2050.

(d) **Negated and redefined the principle of common but differentiated responsibilities and side-stepped the issue of climate equity and justice.** The United Nations Framework Convention on Climate Change and the Kyoto Protocol established that the mitigation actions of developing countries are contingent on the financing and technologies provided by the Annex I parties. The Accord ignored this aspect and established a new set of mitigation and measuring, reporting and verifying obligations for developing countries more stringent than the existing national communications for Annex I parties. Furthermore, it did not contain the comparability obligation negotiated under paragraph 1 (b) (i) of the Bali Action Plan, which would compel Annex I parties that are not Parties to the Kyoto Protocol to commit themselves to individual mitigation targets comparable (in figures, legal nature, time frames) to the commitments of the Parties to the Kyoto Protocol.

(e) **Lack of clarity on the sources and nature of financing and its management.** There is mention in the Accord of finances to support developing countries, but there is a lack of clarity on where the financing would come from, whether in the form of grants or loans, how the decisions on allotments would be made, who would decide etc. Paragraph 8 of the Accord mentions a collective commitment by developed countries to providing new and additional resources approaching $30 billion for the period 2010-2012 for the purposes of adaptation and mitigation. It includes a reference to forestry and investments through international institutions, which could suggest that the source would be the World Bank. Other funds under the United Nations Framework Convention on Climate Change, such as the Least Developed Country Fund and the Adaptation Fund, were not mentioned.

(f) For mitigation alone, developed countries would mobilize $100 billion a year by 2020 for developing countries. However, the phrase "commit to mobilize" is quite different from "commit to provide". The sources for this amount of money to be mobilized range from public and private sources to bilateral, multilateral and alternative sources of funding (which are not defined). Thus, the amount would come not just from public funds plus there is no mention of whether the financing would be in the form of grants or loans, or both.

(g) The establishment of a "Copenhagen green climate fund" was mentioned as a mechanism through which a significant portion of new multilateral funding for adaptation would flow. This fund would be established as an operating entity of the financial mechanism of the Convention (para. 10). Yet, it is not clear what shape this

would take or whether the fund would be managed by the United Nations Framework Convention on Climate Change or outside entities.

41. On 31 January 2010, on the basis of invitations by the Secretariat of the United Nations Framework Convention on Climate Change, some parties submitted their national reduction targets. As of 2 February, 97 of them submitted their targets or the actions they would take. Of that number, 39 were developed countries. According to an analysis by the World Resources Institute, only 3 (Belarus, Croatia and the Russian Federation) out of the 39 developed countries improved their targets in the Accord. Canada lowered its target and other developed countries maintained the same levels as they had announced during the 2009 negotiations. In its submission to the Secretariat, Canada lowered its target reduction to 17 per cent over that of the 2005 level. The Institute commented that the Canadian target was now actually 3 per cent below the 1990 level and if land use, land-use change and forestry were included, the figure would be 19 per cent above the 1990 level. The United States has a similar reduction target of 17 per cent of 2005 levels. It stated that its target is conditional on the assumption that other Annex I parties, as well as more advanced non-Annex I parties, had until 31 January to associate themselves with the Accord and submit mitigation actions for compilation. The Institute noted that the United States target was equivalent to 3 per cent of the 1990 levels.

42. Analysis undertaken by the Sustainability Institute of the Sloan School of Management of the Massachusetts Institute of Technology indicates that the pledges submitted under the Copenhagen Accord will lead to a global temperature rise of 3.9 degrees Celsius, which is far beyond the target of the 2-degree limit set by the Accord. Scientists consider that likelihood would be disastrous for the environment and human life. The Sustainability Institute's study reiterated that to keep within the goal of 2 degrees Celsius, global emissions must peak by 2020 and fall to at least 50 per cent below 1990 levels by 2050.

VI. Conclusion and recommendations

43. For indigenous peoples, the end of the Copenhagen Summit was a major disappointment because the Parties were unable to reach the serious agreements needed to solve an impending human-made global catastrophe. Climate change is a phenomenon which illustrates very lucidly what is wrong with the way the world has been functioning economically, politically and socially. Therefore, it does not suffice to nibble at the edges of the problem. There must be more decisive moves to make greater commitments in terms of reducing emissions, furnishing financial support and transferring mitigation and adaptation technologies. These steps are needed to radically change the paradigm of development and economic growth, putting these factors on track towards a system which is climate-sensitive, respectful of human rights and social justice, and mindful of ecological limits.

44. Negotiations after the Copenhagen Summit should still pursue the two-track approach (under the previously mentioned ad hoc working groups) and the legal outcomes, that is, an amended Kyoto Protocol, which would contain the targets for the second commitment period, and a package of the sixteenth meeting of the Conference of Parties to the United Nations Framework Convention on Climate Change decisions, which would include the comparable commitments of the United States, as well as actions from the high-emitting developing countries, which would

be measured, reported and verified. In considering the scientific analysis showing that the commitments pledged under the Copenhagen Accord would still lead to a temperature rise of 3.9 degrees Celsius, there is an urgent need to pressure Annex I parties and major emitting developing countries to scale up their emission reduction commitments and not make them contingent on what others are willing to commit.

45. Such a package would also contain commensurate and adequate commitments from Annex I parties on finance (in the form of grants and public funds) and on technology transfer to developing countries. The levels of commitment under the Copenhagen Accord are not adequate. The funding mechanism should be housed primarily within the United Nations Framework Convention on Climate Change and not in multilateral development banks.

46. The President of Bolivia, Juan Evo Morales Ayma, in his speech at the Copenhagen Summit and in a meeting with the indigenous peoples' caucus, stated that climate change was a result of capitalism. Climate change is indeed a result of an economic system which is based on the values of consumerism, individualism, domination of nature and "Mother Earth" and the belief that money is wealth. This is a system that has no consideration for ecological limits, is based mainly on fossil fuels for energy, allows for unregulated plunder of natural resources in indigenous peoples' territories, even without their consent, and concentrates great wealth in the hands of a few corporations and individuals, thus fostering gross inequality and destruction of mutual trust, community solidarity and caring. There is a need to restructure national economic, political and social systems to be ecologically sustainable, climate-sensitive, just, equitable and culturally diverse. The Permanent Forum at its ninth session has a good opportunity to elaborate further on the development, with culture and identity, of indigenous peoples.

47. The incessant drive for economic growth should be replaced with a system that seeks growth in the quality of life (living well, life in harmony, *buen vivir*), in human solidarity (mutual trust and caring, connectedness with family, clan, neighbours and even those in distant lands, as well as with future generations yet to come) and in strong connections with nature (seeing humanity as part of nature not as dominators of nature). Indigenous peoples' values of reciprocity, collectivity, solidarity, reverence for nature and the Earth, among others, should underpin such a world. Measures of a good quality of life need to go beyond GNP towards a human development index plus environmental and natural resource indicators. National accounting systems should be expanded to measure not only economic growth but also human well-being and ecological sustainability.

48. Indigenous peoples could further contribute to lowering GHG emissions by continuing their ecosystem-based natural resource management practices and customary use of resources and low-consumption lifestyles and traditional livelihoods. The implementation of the United Nations Declaration on the Rights of Indigenous Peoples will definitely reinforce the capacity of indigenous peoples to mitigate and adapt to climate change. Therefore, the special rapporteurs recommend that national policy frameworks and legislation that protects the rights of indigenous peoples should be enacted and implemented. Financial and technological support should also be provided directly to indigenous peoples so they could pursue their local adaptation and mitigation measures.

49. As far as REDD-plus is concerned, it is important for indigenous peoples to ensure that the points on safeguards remain in the final text. A major challenge is

how can they sustain their effective participation not only at the global level but also at the national and local levels where REDD-plus will be implemented.

50. The factors and activities that would determine the success of local adaptation and mitigation activities, including REDD-plus, which should be pursued at the national and local levels, include the following:

(a) Sustained awareness-raising and capacity-building activities among indigenous peoples, as well as Governments and intergovernmental bodies, so that they would be more responsive to indigenous peoples' demands, need to be undertaken on a broader scale and in a sustained manner. Finances will be needed to accomplish these goals;

(b) Respect for the rights of indigenous peoples, which means the rights contained in the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights instruments and agreements, entails the popularization and implementation of the Declaration by States, the United Nations system, intergovernmental bodies and the private sector. It is important to establish direct links between implementation of the United Nations Declaration on the Rights of Indigenous Peoples and climate change activities;

(c) Policy reforms that would ensure the tenurial rights of indigenous peoples to their forests, carbon and other resources need to be enshrined in law. A review of existing laws, policies, programmes and projects should be completed so that changes could be recommended which need to be put into place. Respect for customary laws on forests and traditional natural resource management knowledge and practices should also be included;

(d) Indigenous peoples should be better equipped to defend their rights. Thus, it is crucial that they learn of these existing tools and instruments, which they could use when they have complaints and grievances on climate change activities that are not done properly. This includes the use of the complaint mechanisms of United Nations Treaty Bodies, other intergovernmental bodies such as the Organization of American States, the African Commission on Human and Peoples' Rights and grievance bodies of multilateral development banks, such as the World Bank and Asian Development Bank, in particular its inspection panels and the ombudsman of the International Finance Corporation, among others;

(e) The full involvement of indigenous peoples and other forest-dwelling people is needed in the design, implementation, monitoring, measuring, reporting, verification, and evaluation processes of REDD-plus. Transparency and coordination among the different players should be ensured;

(f) The design, establishment and implementation of transparent and equitable benefit-sharing distribution systems at the national and subnational levels are needed to ensure that fair benefits go directly to the indigenous peoples and local communities that are the main custodians of the forests;

(g) REDD-plus architecture should include ways to ensure good forest governance, prevention of the displacement of emissions (leakage) and the establishment of robust mechanisms for setting baselines, reference levels, including emission levels, measuring, monitoring, reporting and verifying. That architecture should also allow for subnational implementation subject to strict monitoring, verification and national accounting. The right to self-determination of indigenous

peoples means they can implement REDD-plus at the subnational level as their territories are generally subnational.

51. The decision of the Conference of the Parties in Copenhagen stated that the documents of the two previously mentioned ad hoc working groups would be used as the basis for continuing negotiations in 2010. The mandate of the Ad Hoc Working Group on Long-Term Cooperative Action under the Convention was extended by another year until the 2010 Climate Change Conference in Mexico. Indigenous peoples should continue their active participation so that they could influence the forthcoming negotiations to ensure that the final texts to be agreed upon are enriched further in order to support their local adaptation and mitigation measures. They should still endeavour to get their demands for full and effective participation and for respect of their rights contained in the United Nations Declaration on the Rights of Indigenous Peoples and other international human rights instruments integrated within other documents, not just in REDD-plus. Furthermore, incentivization for the integration and use of their traditional knowledge and traditional technologies in adaptation and mitigation measures should be ensured so that the contributions of indigenous peoples in solving the problems posed by climate change will be reinforced.

52. Finally, the United Nations Permanent Forum on Indigenous Issues, the Expert Mechanism on the Rights of Indigenous Peoples and the special rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples should be involved in monitoring, reporting and helping to develop policy guidelines and action programmes of the United Nations Framework Convention on Climate Change and the Parties at the global and national levels.